

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of decision : 30-05-1996.

CRIMINAL APPEAL No 374 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RAMNIKLAL JESANG VORA

Appearance:

MR MA BUKHARI, APP for Petitioner

MR AB MUNSHI for AJ PATEL for Respondent No. 1

CORAM : H.R.SHELAT,J

Date of decision: 30/05/96

ORAL JUDGEMENT

1. This appeal has been directed against the judgment and order dated 7th March, 1987, passed by the then learned judicial Magistrate, (F.C.) at Dhrol, in

Criminal Case No.327 of 1984 on his file, whereby the respondents-original accused came to be acquitted of the offence punishable under sec.7(1) and 16(1)(a) of the Prevention of Food Adulteration Act.

2. Hariom Surendranath Pandya at the relevant time was serving as food inspector at Jamnagar. Latipur in Tal. Dhrol of Dist. Jamnagar was within his jurisdiction. He used to visit many shops in the area allotted to him so as to find out whether the shop-owners or other traders were selling adulterated article. Whenever he found that adulterated article was sold, he took necessary action undergoing the formalities as per law. On 11th May, 1984 at 10-00 a.m. he went to Latipur for the purpose of checking. He went to the shop of the respondents who carry on their business in the name & style "M/s. Kishore chandra & Brothers". Pravinkumar Nathalal Bhandari was with him. A Turmeric powder sample was taken from the shop of the respondents. The respondents carry on their business in the partnership. All the respondents were not present in the shop, but Ramnikbhai Jesangbhai Vora, the respondent no.1 was present, and he introduced himself to be the Manager of the firm. Hariom Pandya also introduced himself as Food Inspector and then took the sample. About 600 gms. turmeric powder was purchased paying the amount at the rate of Rs.18/- per kg.. The sample was divided into three equal parts and was then kept in three dry and clean bottles. The bottles were then sealed as per the rule and then panchnama was drawn, below which the signature of respondent no.1 was also taken. One of the sample bottles was then sent to the public analyst, Bhuj alongwith the forwarding letter and report was also made to public health authority at Jamnagar. Necessary papers were placed before the local health authority, Rajkot who studying the papers and also the report of the laboratory accorded the sanction to prosecute the respondent. The laboratory after analysis sent the report, that the turmeric powder sent for analysis was found to be of sub-standard i.e. adulterated one. A complaint before the lower court was then lodged. At the conclusion of the hearing, the learned Judge found that the prosecution had failed to establish the charge beyond reasonable doubt, and therefore, he acquitted all the respondents of the charges levelled against them. It is against that order, the present appeal has been preferred by the State.

3. Before the lower Court in defence it was submitted that out of vengeance and bias, a case was made

out and they were wrongly involved. Formerly, Hariom Pandya, the food inspector was serving in the dispensary at Latipur. At that time, respondent no.1 was a member of the Jilla panchayat and he was assigned to handle the health section. The respondent no.1 was not happy with the output of the food inspector at that time serving in the dispensary. Many times respondent no.1 used to rebuke him for not discharging his duties in accordance with the rules. However, the food inspector paid no heed and therefore, the respondent no.1 got him transferred. Later on it seems that Hariom Pandya got the job as food inspector and left the job in the dispensary. Because of strict action the respondent no.1 used to take against Hariom Pandya, he after becoming the food inspector, out of vengeance, planned out this case and involved them.

4. Mr. Bukhari, the learned APP took me to the entire evidence on record and submitted that the evidence on record was sufficient to hold the respondents guilty, but the learned Judge fell into error in appreciating the evidence and was mainly swayed away with the above stated defence in appreciating the evidence. The charge was clearly established and when the evidence was clearly pointing to the guilt on the part of the respondents, the learned Judge ought to have convicted the respondent. When the learned Judge has committed an error, he then urged me to correct the decision, and to upset the findings of the learned Judge below and convict the respondents. He also submitted that in such cases, the accused might not go unpunished, as public health was jeopardized which was an offence more grave in nature than even murder.

5. I entirely agree with the learned APP that whoever plays mischief with the public health must be strictly dealt with and the Court should heavily come down upon the accused playing mischief with public health. But before the strict view is taken, it is to be determined whether prosecution has succeeded in establishing the charge beyond reasonable doubt. If the charge is not proved, the question of taking strict view does not arise.

6. A plain reading of the evidence may show that prosecution has established the charge, but when the evidence is closely scrutinised and scanned the infirmities come to surface which are not trivial but material. The panchnama Ex.27 has been drawn mentioning in details, how the sample was taken, what formalities were observed and how the sample was sealed? That panchnama is therefore the material evidence in such

cases. It is pertinent to note that there are at places erasers in the panchnama. Some erasers are minor one, and it is not necessary to dwell upon the same, but two material erasers cannot be kept aside. Initially, at one place, it was written "Chandrakant & Bros." and erasing the same "Kishore chandra & Bros." has been written. It may be stated that 'Kishore chandra & Bros.' is the name and style in which the respondents are carrying on their business. At a later stage, erasing the word _____(chillies') the word _____(turmeric powders') has been written. I agree with the submission made on behalf of prosecution, that at times, because of the bonafide mistake one may inadvertently write incorrectly and then erasing the same, would write correctly. But here the case of bonafide mistake cannot be accepted. It seems that the food inspector has taken a care to have the initials where there are erasers, but in respect of these two material erasers and elsewhere at few places he has not taken the initials i.e. nowhere his initial appears or the initials of the panch can be spelt out. The respondent no.1 has signed the panchanama at the bottom, but his initial is also not obtained wherever there is erasers and especially when these two material erasers are made. It may be stated at this stage that from the evidence of the food inspector it transpires that he visited many other shops on that day in Latipur. He checked the samples, but did not prefer to take the sample. It is the case of the respondents that they are wrongly involved linking them with the sample of the other shops. Looking to these erasers the possibility of their being wrongly involved cannot be ruled out, and therefore, the doubt that arises, benefit thereof must go to the respondents.

7. On other point also I see no justification to interfere with the finding of the learned Judge below. No doubt, the sample was sent to the laboratory at Bhuj within reasonable period, and the sample article was analysed on 18th May, 1984, but the report was prepared and signed on 25th May, 1984. Thus, it follows that seven days after the analysis the report was prepared and signed by the public analyst. It also transpires that the public analyst did not personally analysed the sample sent, but he caused the sample to be analysed through other members of the laboratory. When such are the facts emerging on record what can be the effect thereof must not be left out of sight. When a similar question arose before this Court twice, once in the case of Babubhai Ranchhodbhai Chauhan v. State of Gujarat, Criminal Revi.Application No.2936 of 1995 and secondly in the case of State of Gujarat v. Chunilal Nhanalal Jaiswal

Criminal Appeal no.200 of 1987, relying upon the decision of the Bombay High Court in Criminal Appeal No.818 of 1969 and Criminal Appeal No.1008 of 1967, it is laid down that if the report is not prepared and signed by the analyst on the same day when the sample sent to him is analysed, the report prepared will cease to have any evidentiary value. The view is accordingly taken so that the result of one sample may not be mixed or linked up with the another sample and the accuse may not have to suffer because of the mistake on the part of the laboratory. It was held so with a view to be sure and certain about the report of the very sample and no other. In this case when similar situation has arisen, the decisions rendered by this Court in the above stated appeals would certainly come into play. Though as alleged, the turmeric powder sent for analysis was analysed on 18th May, 1984, the public analyst prepared the report on 25th May, 1984, and it is not explained by the prosecution why the delay was caused; and though delay was caused there was no possibility of any mistake linking the result of any sample with the other one. When no explanatory evidence is adduced, the report prepared seven days after the analysis will lose its evidentiary value. When that is so, the report on record is required to be ignored from consideration. When that report is ignored, there is no other evidence on record which would go to show that the turmeric powder purchased from the respondents was of sub-standard quality i.e. adulterated one. In short, on record there is no evidence going to show that the sample of turmeric powder taken was of sub-standard quality. When that is the case, the learned Magistrate below was perfectly right in acquitting the respondents.

8. For the aforesaid reasons, I entirely agree with the learned Judge below and I see no justification to upset the finding of the learned Magistrate below. The appeal is therefore devoid of merits and must fail. In the result, the appeal is hereby dismissed.

(Note: At page No.5 of this judgment in the middle in blanks, two words are written in GUJARATI, so kindly refer the original judgment)
